American Bankers Association

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July 22, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Remittances Proposal – Dodd-Frank Act Section 1073; Regulation E
Docket No. R-1419, RIN 7100-AD76

Dear Ms. Johnson:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Federal Reserve's proposed rules and model disclosures to implement section 1073 of the Dodd-Frank Act.[2] The statute adds a new section 919 to the Electronic Fund Transfer Act (EFTA), currently implemented by Federal Reserve Regulation E.

As mandated by the statute, a final rule must be in place by January 21, 2012, 18 months after the statute was enacted. The proposal establishes new disclosures for consumers, both before and after payment, and also implements provisions to help consumers resolve possible errors with these transactions. Although the Board of Governors of the Federal Reserve (the Board) published the proposed rule, the new Consumer Financial Protection Bureau (the Bureau) will assume responsibility for issuing the final rule.

While remittances have been sent in a variety of different ways, including wire transfers and international ACH transactions (IAT),[3] and may be sent account-to-account or for pick-up by the recipient, they deservedly have been considered a distinct product in the market that serves particular needs of an important but separate segment of consumers. It was to ensure appropriate protections for that unique segment that motivated Congress to include section 1073 in the Dodd-Frank Act.[4]

However, the rule as proposed fails to recognize this and therefore obscures important distinctions among cross-border transaction services. It over-broadly reaches transactions not contemplated by Congress in adopting EFTA section 919 and loses the intended focus to help consumers of this specialized market segment that prompted Congressional interest in the first place.

Congress was clearly focused on addressing remittances as small transactions sent by an individual in the United States to relatives overseas; the Senate Report on the legislation specially identifies immigrants sending substantial portions of their earnings to family members abroad.[5] These are the types of funds transfers that the World Bank and United Nations have devoted time and effort to study and understand as remittances.[6]

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[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. The majority of ABA's members are banks with less than $165 million in assets. Learn more at www.aba.com.
[2] The Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173).
[3] According to the Federal Reserve, Federal Reserve Banks now offer this service to over 35 countries.
[4] 111th Congress Report, *2d Session,* Senate 111–176, p. 179
[5] Ibid
[6] It's also worth noting comments made about remittances in an April 16, 2004 speech by then Federal Reserve Governor Ben S. Bernanke at the Financial Access for Immigrants: Learning from Diverse Perspectives conference, sponsored by Federal Reserve Bank of Chicago, Chicago, Illinois, http://www.federalreserve.gov/boarddocs/speeches/2004/200404162/default.htm

ABA believes that the proposal should be tailored to these particular transactions used for these particular purposes and the particular consumers using these services. When so tailored, we believe that the Board's own testing confirms the rule will address the limited gap between current consumer understanding of remittance transactions and the aspirations of Congress to help assure informed consumer choice.

The ABA has joined a group of industry trade associations in a comprehensive comment letter filed under separate cover. We strongly support the points made in that comment letter, but wish to highlight several key points that must be considered in developing a final rule.

Design and Testing of Remittance Disclosures

Since the proposal was developed based on consumer testing, it is worth reviewing the testing conducted for the Board by Macro International of Maryland, especially since their findings are particularly telling. It is important to note the testing was conducted in accordance with the statute to help the Board develop the proposal. The three-phase consumer testing interviewed a group of select consumers. The first phase involved exploratory focus groups in Bethesda, Maryland and California; the second phase tested four disclosure forms; the final phase involved in-depth interviews in New York, Atlanta and Bethesda.

From this consumer testing, several key findings stand out: (1) most senders were satisfied with existing practices and found providers helpful resolving any problems; (2) ability to cancel within the first 24-hours was not critical for senders; and (3) storefront posting was not seen as useful. What stands out most significantly are that consumers were satisfied with their experiences and the need for major changes to "improve" the customer experience was not generated by consumer dissatisfaction.

Overall, consumers reported fees and convenient location for sender and recipient were primary determinants when choosing a provider and most were satisfied with experiences sending remittances. Few comparison-shopped but those who did reported shopping based on fees. Therefore, existing practices appear to meet consumer needs for information, suggesting that significant changes to the process are unlikely to substantially improve the process but could have unintended consequences that do more harm than good.

Many of the suggestions made by consumers about what they would like to see changed to existing practices was instigated by the interviewers' prompting. For example, nearly half of the consumers in the study suggested that written disclosures could actually be an unnecessary complication that could be confusing or that could facilitate identity theft. However, ABA believes that the information that the Board's consultants found from interviewing consumers should be better reflected in the final rule.

ABA Comments on the Proposal

In adopting section 1073, Congress did not create a mandate for an entirely new set of compliance requirements for depository institutions. Instead, the legislative history behind the section suggests an effort to help extend existing best practices across the participants who serve the traditional remittance market. The intent was not to reinvent the remittance market or regulate cross-border wire transfers that serve other personal or business purposes. Instead, it was designed to ensure that all consumers have the same information and protections when sending remittances.

While Congress focused on immigrants sending funds home, the proposed rule would go far beyond the protections envisioned by Congress. And, in creating an overly broad rule, the unintended consequences that are likely to ensue would deprive those Congress meant to protect and other consumers of cross-border wires or remittances at a reasonable cost, assuming they continue to be available.

Although the proposal does establish certain requirements that are in line with the Congressional mandate and which ABA and its members support as responsible providers of remittance services, the current proposal also has adverse consequences for consumers and those that seek to serve them. These must be corrected.

Proposal Requirements Impair Open System Competition That Benefits Consumers

Chief among the problems with the proposal is its failure to appreciate the realities of the open transmission system which is the primary method for small, many mid-size and some larger banks to participate in the remittance market. Unless this method is better handled in the final rule, the bankers who supply competitive alternatives to non-bank closed system representatives in many communities will be forced from the market. As a result, the consumers in those communities will have fewer options among which to shop for fulfilling their remittance needs. Instead of helping consumers, the proposed regulation would make it very difficult, if not impossible, for smaller banks to continue providing a service to customers that need it.

Basically, the proposal is fundamentally flawed in failing to recognize or acknowledge the distinction between open and closed systems, especially by ignoring the fact that open transmission systems for sending international remittances have many attributes that are beyond the control of the sending institution. Ironically, while the proposal appears to ignore those distinctions, the Board did recognize those challenges in its own recently-released study on remittances.[7]

The proposal compounds this flaw by imposing strict liability on providers using open systems for disclosures and resolving errors for any potential problem along the way. By imposing such extensive liability on providers using these systems, the proposal actually requires them to accept risks and costs they cannot control. This unsafe and unsound demand is completely contrary to standard practice that expects a financial institution to identify and then control risks. ABA suggests that a prudent institution, when faced with the inherent risks associated with the proposal's assignment of liability, either deliberately exits the market or effectively prices itself out of the market by imposing fees needed to cover the risk from uncontrollable contingencies. This is certainly counter to what Congress contemplated when it adopted the statute. Failure to adjust this strict liability is only likely to drive responsible providers out of the market and reduce competitive options for the shopping consumer.

Indeed, the business reality is that the open transmission system is the feasible system of choice for mid-size and smaller banks to participate in the remittance market and compete against the agents of the largest, closed system money transmitters. This is especially important for the many communities across the country where service options for sending remittances are limited. Unlike the multiple bank and non-bank players in urban markets, smaller or more rural communities have fewer remittance options. The banks in these communities rely on correspondent relationships or service provides with correspondent networks to be able to offer remittance services to their customers and to others they hope to serve from emerging markets in their communities.

As funds move through open systems, they move over a variety of different routes and through one or more intermediary banks in different countries. The initiating bank may have no contact with the institutions that handle the transaction outside of the first bank to which it sends the funds. In fact, once the funds leave the first bank, the provider has no way of knowing how the funds will transit since it is not a simple case where funds go directly from the original bank to the final destination. This makes it virtually impossible for the provider to have the data needed for disclosures and equally challenging to track down information about the movement to investigate errors. However, the proposal appears based on the erroneous concept that a provider sends funds directly to a receiving institution, a scenario that does not reflect today's international banking system. Imposing impossible or extremely risky obligations and liabilities on banks that leverage open system access will only harm the local community market for

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[7] *Report to the Congress on the Use of Automated Clearinghouse System for Remittance Transfers to Foreign Countries,* July 2011, http://www.federalreserve.gov/boarddocs/rptcongress/ACH_report_201107.pdf

competitive remittance services because they are asked to provide information they do not have and then assume strict liability for the movement of the funds.

It is this significant impact on community banks and the resulting effect on their communities that would have come to light had a panel of small businesses been convened under the SBREFA[8] requirements which the Bureau is obligated to follow when it initiates a rule-making. Although this obligation does not bind the Board, ABA urges the Bureau to follow the spirit of the law and the oral commitments they have expressed to bankers to affirmatively protect diversity in the banking industry by heading the business realities of community bankers as the Bureau pursues its rule-making powers.

Accuracy of Disclosures and Investigating and Resolving Errors

ABA is also concerned about another problem that arises since it appears the proposal was crafted for existing domestic transactions using paper-based disclosures. In domestic transactions, more definitive information is available for disclosures and providers have greater control over the transaction, including the ability to contact other institutions when possible errors occur. However, because providers lack the same control for international transactions and may not have access to the same detail of information, the ability for the initial provider to know with 100% accuracy all the charges that can come into play *en route* is not the same as it may be with a domestic transaction. While open systems allow funds to move to their final destination in an expeditious and efficient manner, it also means that the ability of a provider to disclose fees and charges beyond its control with precision. ABA firmly believes the final rule must acknowledge these elements and provide that it is not an error if the information provided by an initial disclosure and receipt were accurate when furnished and provided in good faith.

Similarly, the very open elements that let funds move efficiently makes it difficult for a provider to trace and investigate errors. Identifying all the institutions *en route* alone is a daunting task for providers, possibly months after a small remittance was sent through the system. Compounded with different customs, legal systems and languages in other countries can all make it more difficult and take longer to investigate possible problems. ABA firmly believes this should be reflected in the final rule.

An Over-inclusive Definition Impairs Other Wire Services for Consumers

An additional significant problem with the proposed rule is that it will adversely affect consumers and small businesses by going far beyond what most traditionally consider a remittance and capturing larger-dollar and other transactions conducted for a variety of purposes. This is where the proposal is most likely to conflict with existing protections established through Article 4A of the Uniform Commercial Code for wire transfers. While the proposal defers to the National Commissioners on Uniform State Laws (NCCUSL) and the individual states to resolve these conflicts, the ABA suggests this is an inappropriate abdication of responsibility by the Board that is only likely to engender confusion, conflict and lawsuits.

A more focused definition excluding as many transfers already covered by UCC4A as is possible would go a long way to help consumers that already use wire services outside the normal remittance market. To do otherwise only further burdens small and mid-size banks that attempt to get a toe-hold in the wire market to enable them to serve a broader range of customer needs rather than send those customers to other institutions for specialized services. There is no reason for the Bureau to exceed the remittance focused mandate of section 1073 and undermine consumer services that do not display the problems sought to be addressed in the remittance space.

[8] Small Business Regulatory Enforcement Fairness Act (SBREFA) made applicable to the Bureau by DFA Section 1100G.

Sanctions Screening

Another problem in the proposed rule and its failure to acknowledge operational realities is the issue of timing and the extensive application of sanctions screening that comes into play for international transactions. The final rule must acknowledge delays beyond the provider's control that can be caused by sanctions screening. While all transactions are subject to sanctions screenings, international transactions are affected far more. Not only does a provider screen the transactions, but the receiving financial institution and each intermediary along the way will all screen for possible matches with specially designated national lists. For a United States provider, this includes screening for compliance in the United States with sanctions administered by the Office of Foreign Assets Control (OFAC) as well as separate sanctions programs administered by the Department of Commerce. In addition, there are sanctions program under the United Nations, the European Union and individual countries around the globe. With each program, while filters used to detect matches are increasingly sophisticated, variations in international spelling, missing information or other flaws can easily cause filters to create a false positive match which takes time for the handling institution, whether that be the originating financial institution, an intermediary financial institution or the receiving institution, to investigate and resolve. It is only logical to anticipate that these can cause delays in processing and that these delays can affect the date the funds are ultimately delivered. Because they are completely outside the ability of the provider to control, any delays caused by a question or the application of a sanctions program – anywhere along the route – should excuse the delay and not be deemed to be an error in disclosure.[9]

Diversion to Non-Bank Providers

Another inherent risk and a potentially serious unintended consequence is that the proposal, as structured, could drive these transactions outside traditional markets and potentially drive them underground. Making it increasingly difficult for responsible providers to offer these transactions does not eliminate the need or demand. Instead, it is more likely that these transactions will default to the black market or underground providers. This makes it simpler for non-legitimate senders to transmit funds, creating a fertile environment for underground transactions using informal value transfer systems (IVTS) that could compromise national security by helping facilitate money laundering or terrorist financing.

Disclosure Format

Proposed section 205.31(c) outlines specific formats for disclosures where providers would have to meet specific formatting standards, including grouping, proximity, prominence, size and segregation. These requirements are more detailed than prior Regulation E disclosure requirements. ABA believes that, while well-intentioned, the prescriptive nature of the proposed disclosures will be detrimental, especially for disclosures provided online or using mobile devices. As noted above, the proposed format seems designed with the in-person transaction and paper-based disclosures and receipts in mind but is inconsistent with the breadth of the proposed coverage and sufficiently inflexible that it would be counter to anything other than an in-person transaction in a physical location. To allow for better customer service, increased flexibility is necessary in the final rule. The existing "clear and reasonably understandable" standard in Regulation E should be sufficient.

Storefront Disclosures

One of the most challenging elements of the statute would have required disclosures in storefront locations. However, both the Board and consumers in the focus group studies recognized the difficulties to providing this information. Moreover, the Board determined that this information would provide little benefit for consumers and concluded it would not be helpful to include such a requirement in the proposal; since storefront notices will not be required, the proposal also does not require model remittance transfers be posted on websites. ABA agrees with these conclusions by the Board and believes that this should be maintained in the final rule.

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[9] In fact, it is not extraordinary to anticipate that a transaction could originate without being subject to a sanction that could be subject to a sanction before the funds are finally delivered; in the United States, OFAC is constantly updating its list of specially designated nationals.

Conclusion

Providing consumers with information that can help them make informed decisions and resolve errors expeditiously are important elements of good customer service. Fortunately, many ABA members already provide appropriate information about remittances and when something goes awry take steps to assist their customers. The fact that most consumers in the focus group studies found that the existing systems are working satisfactorily verifies this.

However, ABA is extremely concerned that the proposal could seriously undermine what Congress set out to do with section 1073 of the Dodd-Frank Act. Instead of providing consumers with additional protections, the proposed rules would actually undermine consumer service by making it infeasible for many companies to continue offering these services. Without substantial changes, it is likely that small and mid-size institutions will exit the market and larger institutions will significantly curtail their operations. Primarily, these changes would be caused by the serious risks and strict liability that the proposed rule would impose.

A serious side effect, which should raise national security concerns, is that the proposal could drive many of these transactions underground to informal value transfer systems. The rule will not change demand but it will force consumers to seek alternative channels to send funds overseas. As a result, the "black market" for remittances will expand and in turn make it simpler to use and therefore less easy for law enforcement to detect possible instances of money laundering and financing of terrorist activities.

ABA believes that there are adjustments that can be made to the rule that will obviate these potential problems. First, the rules must acknowledge that there are many steps in the process that are outside the control of providers in the United States. Second, the extremely proscriptive formatting which appears designed for paper disclosures in face-to-face transactions should be made far more flexible to allow for alternative delivery channels, especially online and mobile technologies. Third, the rules need to make allowance for consumers who were not the focus of the statutory provisions; basically, the definitions need to be resolved to cover traditional remittances and not create an overly broad definition that sweeps in a multitude of international wires that the statute was never meant to cover. And finally, the rule must address the potential conflicts with the Uniform Commercial Code.

ABA and our members are certainly willing to work with the Bureau to resolve these issues and create a workable solution that continues protecting consumers without making it impossible to continue offering the services consumers want and need. We urge the Bureau as it takes over this rule-making to conduct outreach to community banks and small businesses to assure that their circumstances have been adequately understood, considered and addressed in any final rule. ABA stands ready to facilitate such outreach.

Thank you for the opportunity to comment.

Sincerely,

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Vice President & Senior Counsel

cc: Zixta Martinez, Assistant Director, CFPB